

Clerk, U.S. District Court  
Southern District of Texas  
FILED

OCT 15 2012

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOHN H. RAMIREZ,  
Petitioner,

V.

RICK THALER, Director,  
Texas Department of Criminal  
Justice, Correctional Institutions Division,  
Respondent.

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~~CIVIL~~ CASE  
NO.                     

**mc-C-12-502**

**MOTION FOR APPOINTMENT OF COUNSEL**

COMES NOW JOHN H. RAMIREZ, and respectfully requests this court to appoint Michael C. Gross to represent Mr. Ramirez in his federal habeas corpus proceedings. This motion is made pursuant to 18 U.S.C. § 3599 and McFarland v. Scott, 512 U.S. 849, 114 S.Ct. 2568, 129 L.Ed.2d 666 (1994).

The following is provided in support of this request:

1. Mr. Ramirez was convicted in 2008 of capital murder in Cause No. 04-CR-3453-C(2) in the 94th Judicial District Court of Nueces County, Texas, and was sentenced to death. Mr. Michael C. Gross was appointed to represent Mr. Ramirez on his state habeas case. The conviction and sentence were affirmed by the Texas Court of Criminal Appeals in an unpublished opinion. Ramirez v. State, No. AP-76,100 (Tex. Crim. App., March 16, 2011). A petition for a writ of certiorari was not filed. An Application for a Writ of Habeas Corpus was mailed for filing on April 13, 2011 with the 94th Judicial District Court of Nueces County, Texas. The District Court after an evidentiary hearing entered findings of fact and conclusions of law recommending that relief be denied. The Texas Court of Criminal Appeals adopted those recommendations and denied relief on October 10, 2012. Ex parte Ramirez, No. WR-72,735-03 (Tex. Crim. App., October 10, 2012).

2. In McFarland v. Scott, the Supreme Court was presented with the question of whether, in advance of filing a federal habeas petition, a condemned state prisoner who sought to file a federal petition could be appointed counsel under 21 U.S.C. § 848(q)(4)(B), and whether the right to counsel “[i]n any post conviction proceeding” afforded by § 848(q)(4)(B) allowed appointment prior to the filing of a habeas petition. The Court decided that it did:

The language and purposes of § 848(q)(4)(B) and its related provisions establish that the right to appointed counsel includes a right to legal assistance in the preparation of a habeas corpus application. We therefore conclude that a “post conviction proceeding” within the meaning of § 848(q)(4)(B) is commenced by the filing of a death row defendant's motion requesting the appointment of counsel for his federal habeas corpus proceeding.

McFarland v. Scott, 114 S.Ct. at 2572-3.<sup>1</sup>

3. Mr. Ramirez is clearly entitled to appointment of counsel. He has never before presented his constitutional claims for relief to a federal court. He is entitled to the assistance of counsel in order to present those claims.

Michael C. Gross is well qualified to represent Mr. Ramirez. Mr. Gross has been involved in criminal defense for over 24 years and is board certified in criminal law by the National Board of Trial Advocacy and the Texas Board of Legal Specialization. He has been in private practice in San Antonio, Texas, since 1996 limiting his practice to criminal defense in state, federal, and military cases. He has participated in over 100 hours of training focusing exclusively on issues involving death sentenced individuals. He is an active member of the Texas State Bar. He is admitted to practice in the Supreme Court of the United States, the United States Courts of Appeals for the Fifth

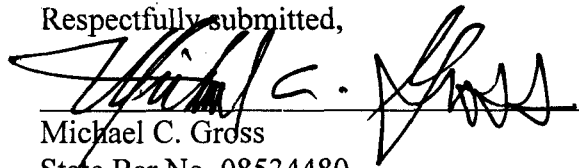
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<sup>1</sup> The McFarland Court also decided that “once a capital defendant invokes his right to appointed counsel, a federal court also has jurisdiction under § 2251 to enter a stay of execution.” Id. at 2573.

and Tenth Circuits, and the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas and is on the A+ Panel for court appointments in the United States District Court for the Western District of Texas. He has represented numerous death sentenced inmates, and is familiar with the law and procedures of death penalty litigation.

WHEREFORE, PREMISES CONSIDERED, Mr. Ramirez respectfully requests that this court appoint Mr. Michael C. Gross as counsel for Mr. Ramirez in this federal habeas cause.

Respectfully submitted,

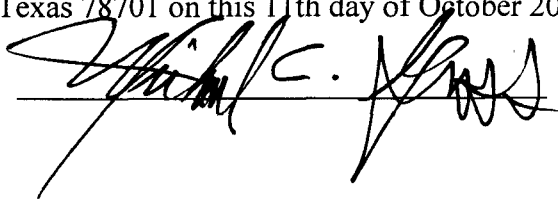
A handwritten signature in black ink, appearing to read "Michael C. Gross", written over a horizontal line.

Michael C. Gross  
State Bar No. 08534480  
106 South St. Mary's Street, Suite 260  
San Antonio, Texas 78205  
(210) 354-1919  
(210) 354-1920 (Fax)

Attorney for the Applicant,  
JOHN H. RAMIREZ

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was mailed to Greg Abbott, Attorney General, 209 West 14th, 7th Floor, Austin, Texas 78701 on this 11th day of October 2012.

A handwritten signature in black ink, appearing to read "Michael C. Gross", written over a horizontal line.